(19,460 and 19,461.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904

No. 360.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY, APPELLANT,

vs.

WILLIS G. BOWLAND, AS TREASURER, AND L. EWING JONES, AS AUDITOR OF FRANKLIN COUNTY, OHIO; ARTHUR I. VORYS, AS SUPERINTENDENT OF INSURANCE, AND WILLIAM S. McKINNON, AS TREASURER OF THE STATE OF OHIO.

No. 361.

WILLIS G. BOWLAND, AS TREASURER, AND L. EWING JONES, AS AUDITOR OF FRANKLIN COUNTY, OHIO, ET AL., APPELLANTS,

vs.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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1 THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Eastern Division, }

At a stated term of the circuit court of the United States of America, within and for the eastern division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court rooms at the city of Columbus, Ohio, in said district, on the first Tuesday of June being also the seventh day of that month, in the year of our Lord, one thousand nine hundred and four, and of the American Independence, the one hundred and twenty-eighth.

Present the honorable, Albert C. Thompson, district judge. Sitting and holding circuit court.

Among the proceedings had were the following—to-wit:

THE SCOTTISH UNION AND NATIONAL INSURance Company, Complainant,
vs.
WILLIS G. BOWLAND, L. EWING JONES, ARTHUR I. VORYS, and William S. McKinnon, Defendants. } Bill of Complaint.

Be it remembered, that heretofore to-wit: on the 20th day of April, in the year of our Lord one thousand nine hundred and four, came the complainant by his attorney and filed in the clerk's office of said court his certain bill of complaint, which said bill of complaint is clothed in the words and figures following, to-wit:

Bill of Complaint.

Circuit Court of the United States, Southern District of Ohio, Eastern Division, ss.

2 THE SCOTTISH UNION AND NATIONAL Insurance Company, Complainant,
vs.
WILLIS G. BOWLAND, L. EWING JONES, ARTHUR I. VORYS, and William S. McKinnon, Defendants. } Bill of Complaint.

To the judges of the circuit court of the United States for the southern district of Ohio, eastern division:

The Scottish Union and National Insurance Company a corporation organized under the laws of Great Britain and a subject of Great Britain, brings this, its bill of complaint, against Willis G.

Bowland and L. Ewing Jones, residents of the city of Columbus, county of Franklin, and State of Ohio, Arthur I. Vorys, a resident of the city of Lancaster, county of Fairfield, and State of Ohio, and William S. McKinnon, a resident of the city of Ashtabula, county of Ashtabula, and State of Ohio, each and every of them being citizens of the State of Ohio.

Your orator respectfully shows to the court that the matter in dispute in the above entitled cause exceeds, exclusive of interest and costs, the sum or value of two thousand dollars ($2,000.00).

The defendant, Willis G. Bowland, is the duly elected, qualified and acting treasurer of said Franklin county, Ohio; the defendant L. Ewing Jones, is the duly elected, qualified and acting auditor of said Franklin county, Ohio, the defendant, Arthur I. Vorys,
3 is the duly appointed, qualified and acting superintendent of insurance of the State of Ohio; and the defendant, William S. McKinnon, is the duly elected, qualified and acting treasurer of the State of Ohio.

Complainant says that it is engaged in the business of insuring property against loss and damage by fire, with its home office in the city of Edinburgh, Scotland, and its chief office in the United States in the city of Hartford, State of Connecticut, from which latter office it conducts all its business in Ohio; that it has complied with all the statutory requirements of the State of Ohio regulating its admission to said State for the purpose of transacting its business therein; that it has been for 17 years last past duly licensed and lawfully engaged in said business in the State of Ohio; that, as one of the conditions to its right to do business in the State of Ohio, and in compliance with the statute in such cases made and provided, it deposited, on the 14th day of September, 1894, fifty thousand dollars ($50,000.00), par value, and, on the 7th day of November, 1894, an additional fifty thousand dollars ($50,000.00), of municipal bonds of the county of Lucas, in the State of Ohio, with the superintendent of insurance of the State of Ohio, at the city of Columbus, county of Franklin, in said State, for the benefit and security of the policy holders of the complainant residing in the State of Ohio; that said bonds were deposited as a trust fund for the benefit and security of the policy holders of complainant residing in Ohio, under the provisions of the statutes of the State of Ohio for such cases made and provided; that said municipal bonds thereafter remained so deposited with said superintendent of insurance until the 2nd day of April,
1903, and no longer, when they were wholly withdrawn from
4 such deposit and removed from the State of Ohio and wholly outside the borders of said State, and when there was exchanged and substituted therefor by the complainant *in* such deposit of bonds of the United States of America in the said sum of one hundred thousand dollars, ($100,000.00), par value; that said municipal bonds, so on deposit as aforesaid from the 14th day of September, 1894, and the 7th day of November, 1894, respectively as aforesaid to the 2nd day of April, 1903, were in accordance with section 2711-20 of the Revised Statutes of Ohio, registered bonds of

said municipality registered in the name of the said superintendent of insurance, for the benefit and security of the policy holders of the complainant residing in the State of Ohio; and that said municipal bonds, during the entire period of their deposit as aforesaid, were in the custody of the treasurer of the State of Ohio, the same having been delivered to him by the superintendent of insurance as provided by law.

That, upon application of this complainant theretofore made as provided by law to be made, the said superintendent of insurance, upon the receipt by him from this complainant of the sum of one hundred thousand dollars, ($100,000.00), par value, of bonds of the United States of America so exchanged and substituted for the same and deposited in lieu thereof as aforesaid, did, on or about the said 2nd day of April, 1903, withdraw, upon his written order as provided by law, the said municipal bonds from their deposit with the treasurer of the State of Ohio where they had been deposited according to the statute of said State for such cases made and provided, and did, on said date, deliver the said municipal bonds to this com-
5 plainant, who then and thereupon wholly removed the said municipal bonds from and outside of the borders of the State of Ohio, since which the said bonds have not been, nor have any of them, been, within the borders of the State of Ohio, but each and all of them have been and are now, as well the beneficial ownership as the paper evidence of the bonds themselves, wholly outside of the borders of the State of Ohio.

That the defendant, Arthur I. Vorys, has been the duly qualified and acting superintendent of insurance in and for the State of Ohio since the 3rd day of June, 1900, and is and has been continuously during said period a resident of Fairfield county, Ohio, in which county he has during all of said period returned and still returns his property for taxation; and that during the period from the 14th day of September, 1894, to the 3rd day of June, 1900, both inclusive, the office of superintendent of insurance of the State of Ohio was occupied by persons who were residents of other counties than the said county of Franklin, of the State of Ohio, in which other counties they respectively returned their property for taxation during each of the several years of said period.

Complainant says that it is not now and never has been a resident or citizen of the State of Ohio; that during the period beginning with the year 1894 and ending at the present time, complainant has made all returns required of it by the laws of Ohio governing foreign fire insurance companies to the several State and county officers of said State, and has paid all taxes and assessments that have been levied or assessed against it; but that neither complainant nor the superintendent of insurance of said State, nor the treasurer of said State, returned said municipal bonds, or any of them, for taxation in any of said years of their deposit as
6 aforesaid, acting under the honest belief that said bonds were not taxable in or by the State of Ohio.

Complainant says that said bonds of the United States which were substituted for said municipal bonds as aforesaid, are now on deposit with said superintendent of insurance at Columbus, Ohio, and that the complainant has other property in said Franklin county and in the State of Ohio.

Complainant says that, under the statutes of Ohio only personal property in Ohio, and moneys, credits and investments in bonds in the possession or under the control of persons residing in Ohio on the 12th day of April, 1903, were returnable in said State for taxation for the year 1903.

Complainant says that under date of the — day of September, 1900, this complainant was served with notice from the auditor of Franklin county, Ohio, to appear before him and be examined in regard to property omitted from the tax duplicate for the years 1895 to 1900, inclusive; that thereafter, to wit: on the 9th day of October, 1900, the said auditor illegally entered upon the tax list of said Franklin county, and illegally assessed against this complainant personally pretended taxes for and on account of said municipal bonds for the years 1895 to 1900 inclusive; and that said pretended taxes were so assessed and entered upon said tax list in the words and figures following, to wit:

Owner's name.	Year.	Value.	Rate.	Tax by levy.	Special tax.	Grand total.
Scottish Union and National Insurance Company.....	1895	100000	2.70	$2700.		
	1896	100000	2.70	$2700.		
	1897	100000	2.70	$2700.		
	1898	100000	2.75	$2750.		
	1899	100000	2.75	$2750.		$16350
	1900	100000	2.75	$2750.	$817.50	817.50

Complainant says that under date of the 4th day of December, 1903, complainant was served with notice from the auditor of
7 Franklin county, Ohio, to appear before him and be examined in regard to property omitted from the tax duplicate for the years 1901, 1902 and 1903; that thereafter, to wit, on the 11th day of December, 1903, the said auditor illegally entered upon the tax list of Franklin county, Ohio, and illegally assessed against this complainant personally pretended taxes for and on account of said municipal bonds for the years 1901, 1902 and 1903, and that said pretended taxes were so assessed and entered upon said tax list in the words and figures following, to wit:

Owner's name.	Year.	Value.	Rate.	Tax by levy.	Special tax.	Grand total.
Scottish Union and National Insurance Company	1901	100000	2.85	$2850.		
	1902	100000	2.75	$2750.		
	1903	97000	3.00	$2910.	$425.50	$8510. 425.50

Complainant says that said municipal bonds were not taxable, nor were any of them taxable, in said Franklin county during the years 1895 to 1903, inclusive, or any of said years or any part of any of them, under any law of the State of Ohio.

Complainant says that the treasurer of said Franklin county has never caused said municipal bonds, or any of them, to be attached or distrained, nor has he ever taken possession of, or attempted in any way to take possession of, said bonds, or any of them, for the purpose of enforcing the payment of the said pretended taxes so assessed as aforesaid, or any part of same, out of said bonds, or any of them, and has taken no steps whatever for the enforcement of the payment of said pretended taxes so assessed out of said bonds themselves, or any of them; and that, at the time the said bonds were sent out of and removed from the State of Ohio as aforesaid, there was no lien upon or other charge against said bonds, or any of
8 them, for the taxes for the years 1895 to 1903, inclusive, or any part of any one of said years.

That, under the provisions of section 2859, of the Revised Statutes of Ohio, in addition to the other remedies provided by law for the collection of taxes assessed in respect of personal property, the treasurer of a county in Ohio is specially authorized and empowered, when any personal taxes shall stand charged against any person, and the same shall not be paid within the time prescribed by law for the payment of such taxes, to enforce the collection by a civil action in the name of the treasurer of said county against such person for the recovery of such unpaid taxes; and it is further provided, in and by said statute, that, if on the trial of such action, it shall be found that such person is so indebted as charged, judgment shall be rendered against such person in favor of said treasurer so prosecuting said action, as in other cases.

That the auditor of said Franklin county has certified for collection all the said pretended taxes so levied and assessed as aforesaid against complainant by reason of said municipal bonds to the treasurer of said county; that, on or about the 15th day of November, 1900, an action against complainant, under the provision of said section 2859, to collect the taxes so assessed against complainant as above alleged for the years 1895 to 1900, inclusive, was commenced

in the court of common pleas of Franklin county, State of Ohio; and that said action is still pending.

That complainant has not now, and never has acquired, a residence in the State of Ohio; that said statute, in so far as it attempts to give a right to collect said pretended taxes against this complainant by personal judgment, is unconstitutional and void, being in violation of the fourteenth amendment of the Constitution of the United States and of the treaty rights of complainant as a subject of Great Britain; and that any effort on the part of the said defendant,
9 Bowland, as treasurer of said Franklin county, to collect said pretended taxes upon or on account of said municipal bonds, or any of them, against this complainant personally would be and is without due process of law and in violation of the fourteeth amendment of the Constitution of the United States and of the treaty right of complainant as a subject of Great Britain.

That, under the provisions of section 1095 of the Revised Statutes of Ohio, a treasurer of a county in Ohio is specially authorized and empowered, when taxes are past due and unpaid, to distrain sufficient goods and chattels belonging to the person charged with such taxes, if found within the county, to pay the taxes so remaining due and the costs that have accrued, the said statute further authorizing said treasurer to advertise and sell the property so distrained at public sale.

Complainant says that the said municipal bonds, in respect of which the said pretended taxes have been assessed against complainant as above alleged, being no longer within the State of Ohio, or subject to distraint or attachment at the hands of said Bowland as treasurer, he, the said Bowland, as said treasurer, threatens to and will, unless restrained by this court, distrain, or attempt to distrain, and sell, or attempt to sell, claiming to act in that behalf under the provisions of said section 1095, the said bonds of the United States belonging to complainant and now on deposit with the superintendent of insurance of the State of Ohio as aforesaid, or other personal property of complainant which may now or hereafter be situate in said Franklin county, or the State of Ohio; and that said
10 Arthur I. Vorys and William S. McKinnon threaten to and will, unless restrained by this court, deliver over to the said Bowland, as said treasurer, all or some of said bonds of the United States so deposited by complainant, as aforesaid.

Complainant says that, in so far as said section 1095 attempts to give said defendant, Bowland, as said county treasurer, the right and power of collecting said pretended taxes against complainant by distraint against the goods and chattels belonging to complainant, even if the same be found within the said Franklin county, is unconstitutional and void, being in violation of the fourteenth amendment of the Constitution of the United States and the treaty rights of complainant as a subject of Great Britain, and that any effort on the part of said Bowland, as said treasurer, to distrain said bonds of the United States, or other personal property of complainant, or

any effort on the part of defendants, Arthur I. Vorys and William S. McKinnon, or either of them, to deliver to said defendant, Bowland, as said treasurer, either upon his demand or otherwise, the said bonds of the United States, or any of them, deposited with the superintendent of insurance as aforesaid, would be and is without due process of law and in violation of the fourteenth amendment of the Constitution of the United States and of the treaty rights of complainant as a subject of Great Britain.

Complainant represents that, by statute of the State of Ohio it is expressly provided that suits may be brought and maintained in equity to enjoin the illegal levy of taxes and assessments, or their collection; and that, by the law of the State of Ohio, complainant has no remedy at law against these defendants, or either of
11 them, to prevent the collection of the said pretended taxes so assessed as aforesaid, on account of said municipal bonds, against it personally, or to prevent the distraining and sale of its personal property situate or which may be situate in said county of Franklin.

Wherefore, complainant prays that the said defendant, Bowland, as treasurer of Franklin county, Ohio, be temporarily restrained from collecting, or attempting to collect, any of said pretended taxes against complainant personally; that said defendant, Bowland, be restrained from collecting, or attempting to collect, the said pretended taxes, or any portion of them, by distraint, against either said bonds of the United States so deposited as aforesaid, or any personal property of complainant which may now or hereafter be situate in the said county of Franklin, or the State of Ohio; that said defendants, Arthur I. Vorys as superintendent of insurance, and William S. McKinnon, as treasurer of the State of Ohio, be temporarily restrained from delivering, or attempting to deliver, said bonds of the United States on deposit with them or any part of same, to the said Willis G. Bowland, as said treasurer as aforesaid; and that, upon final hearing herein, said injunctions be made perpetual; and for such other and proper relief as equity and good conscience may require.

May it please this honorable court to grant to complainant a writ of subpœna directed to the said Willis G. Bowland, L. Ewing Jones, Arthur I. Vorys and William S. McKinnon commanding them on a day certain and under a certain penalty to be therein inserted, personally to appear before this honorable court then and there to answer the premises and to stand and abide such order and decree herein as to this court shall seem agreeable to equity and good conscience.

W. O. HENDERSON,
HARTWELL CABELL,
Solicitors for Complainant.

12 And thereupon, there was issued out of the clerk's office of the court aforesaid, our certain writ of subpœna in chancery

in this cause, directed to the marshal of said district and against the said defendant, which said subpœna is clothed in the words and figures following, to-wit:

Subpœna.

UNITED STATES OF AMERICA,
Southern District of Ohio, Eastern Division, } ss:

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon Willis G. Boland and L. Ewing Jones, of Columbus, Ohio, Arthur I. Vorys, of Lancaster, Ohio, and William S. McKinnon, of Ashtabula, Ohio, citizen of and resident in the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States for the eastern division of the southern district of Ohio, aforesaid at Columbus, on the first Monday in July next, to answer a certain bill in chancery, filed and exhibited in said court, against them by the Scottish Union and National Insurance Company, a corporation organized under the laws of Great Britain, and a subject of Great Britain.

Hereof you are not to fail under the penalty of the law thence ensuing. And have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 21st day of April A. D. 1904, and in the 128th year of the Independence of the United States of America.

Attest:

[SEAL.] B. R. COWEN, *Clerk.*

13

Memorandum.

The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of June 1904. Otherwise the said bill may be taken *pro confesso.*

B. R. COWEN, *Clerk.*

And afterwards to-wit: on the 4th day of May in the year last aforesaid, came the marshal of said district to whom the said subpœna was in form directed and returned the same into the clerk's office of said court, endorsed as follows, to-wit:

To the clerk of said court:

In the above cause, please enter the appearance of Willis G. Bowland and L. Ewing Jones as defendants, and E. L. Taylor, Jr., A. T. Seymour, Karl T. Webber and Wilber E. King, as their solicitors.

WILLIS G. BOWLAND,
L. EWING JONES,
By EDWARD L. TAYLOR, JR.,
SEYMOUR, WEBBER & KING,
Their Attorneys.

In the above cause please enter the appearance of Arthur I. Vorys, and Wm. S. McKinnon as defendants and Wade H. Ellis as their solicitor.

ARTHUR L. VORYS AND
WM. S. McKINNON,
By WADE H. ELLIS,
Attorney Gen.

And afterwards, to-wit: on the 19th day of May A. D. 1904. A demurrer was filed in the clerk's office of said court, clothed in the words and figures following to-wit:

Demurrer of Willis G. Bowland.

14 THE SCOTTISH UNION AND NATIONAL Insurance Company, Complainant,
vs.
WILLIS G. BOWLAND, L. EWING JONES, Arthur I. Vorys, and William S. McKinnon, Defendants.
No. 1168. In Equity.

Demurrer of Willis G. Bowland, as treasurer of Franklin county, Ohio, to the bill of complaint of The Scottish Union and National Insurance Company, complainant.

To the judges of the circuit court of the United States for the southern district of Ohio, eastern division:

This defendant by protestation, not confessing nor acknowledging all or any of the matters and things in said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs to so much and such part of said bill of complaint as seeks to enjoin and restrain this defendant Willis G. Boland as treasurer of Franklin county Ohio, from collecting or attempting to collect the taxes alleged in said bill of complaint, by an action against complainant under the provisions of section 2859 of the Revised Statutes of Ohio, which section especially authorizes and empowers the treasurer of any county when any personal taxes shall stand charged against any person and the same shall not be paid within the time prescribed by law for the payment
of such taxes, to enforce the collection by a civil action in the
15 name of the treasurer of said county against such person for the recovery of such unpaid taxes, and on the trial of such action if it shall be found that such person is so indebted as charged, judgment shall be rendered against such person in favor of said treasurer so prosecuting said action as in other cases.

For cause of demurrer, this defendant shows that the complainant has not in and by its said bill made or stated such a case as entitles it in a court of equity to the relief against this defendant, restraining

him from proceeding to collect said taxes as provided by section 2859 of the Revised Statutes of Ohio.

And for further cause of demurrer this defendant shows that complainant is not entitled to sustain said bill for the reason that it has a full, complete and adequate remedy at law.

This defendant further by protestation, not confessing nor acknowledging all or any of the matters and things in said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs to so much and such part of said bill of complaint as seeks to enjoin and restrain this defendant Willis G. Bowland as treasurer of Franklin county, Ohio, from collecting or attempting to collect the taxes alleged in said bill of complaint or any portion of them by distraint against either said bonds of the United States deposited as alleged in said bill or any personal property of complainant which may now or hereafter be situated in said county of Franklin, or the State of Ohio, under the provisions of section 1095 of the Revised Statutes of Ohio, which especially authorizes and empowers the treasurer of any county in Ohio when taxes are past due and unpaid to distrain sufficient goods and chattels belonging to the person charged with said taxes, if found within the county, to pay the taxes so remaining due and *and* the costs that have accrued, and authorizing said
16 treasurer to advertise and sell the property so distrained at public sale.

For cause of demurrer this defendant shows that the complainant has not in and by its said bill made or stated such a case as entitles it in a court of equity to the relief against this defendant restraining said defendant from proceeding to collect said taxes by virtue of the provisions of said section 1095 of the Revised Statutes of Ohio.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant demurs separately and severally to the parts in said bill above specified, and to all matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to such parts of the said bill as are so demurred to as aforesaid, or either of them, and prays to be dismissed with his costs and charges in this behalf most wrongfully sustained.

For further cause of demurrer, the defendant, Willis G. Bowland, as treasurer of Franklin county, Ohio, by protestation, not confessing or acknowledging all or any of the matters and things in complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur to said bill of complaint generally and for cause of demurrer shows that the said complainant has not in and by the said bill made or stated any such cause as doth or ought to entitle it to any such recovery or relief as is thereby sought and prayed for from or against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur thereto

generally and doth humbly demand the judgment of this court whether he shall be compelled to make any further or other answer to said bill and to be hence dismissed with his costs
17 as heretofore prayed most wrongfully sustained.

EDWARD L. TAYLOR, JR.,
AUGUSTUS T. SEYMOUR,
KARL T. WEBBER, AND
WILBUR E. KING,
Attorneys for Defendant.

UNITED STATES OF AMERICA,
Southern District of Ohio, Eastern Division, } *ss:*
County of Franklin, Ohio,

Willis G. Bowland, makes solemn oath and says that he is the above-named defendant, and that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

WILLIS G. BOWLAND.

Subscribed and sworn to before me this 17th day of May, 1904.

KARL T. WEBBER,
[SEAL.] *Notary Public in and for Franklin County, Ohio.*

I hereby certify that in my opinion, the foregoing demurrer is well founded in point of law.

AUGUSTUS T. SEYMOUR,
Of Counsel for Defendant.

And afterwards, to-wit: on the 21st day of May A. D. 1904, a demurrer was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY, Complainant,
vs.
WILLIS G. BOWLAND, L. EWING JONES, Arthur I. Vorys, and William S. McKinnon, Defendants. } No. 1168. In Equity.

18 Demurrer of Arthur I. Vorys and William S. McKinnon to the bill of complaint of The Scottish Union and National Insurance Company, complainant.

To the judges of the circuit court of the United States for the southern district of Ohio, eastern division:

These defendants, Arthur I. Vorys and William S. McKinnon, each for himself, respectively, by protestation, not confessing nor acknowledging all or any of the matters and things in said bill of complaint

contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs thereto and for cause of demurrer shows that complainant has not in and by its said bill made or stated such a case as entitled it in a court of equity to the relief asked against these defendants, or either of them, restraining them from delivering or attempting to deliver bonds of the United States on deposit with them as alleged in said bill.

Wherefore, and for divers other causes of demurrer appearing in the said bill, these defendants, respectively, demur thereto, and to all matters and things therein contained, and pray the judgment of this honorable court whether they or either of them shall be compelled to make any further or other answer to said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

ARTHUR I. VORYS,
WILLIAM S. McKINNON,
By WADE H. ELLIS,
Attorney General.

19 UNITED STATES OF AMERICA,
Southern District of Ohio, Eastern Division, } *ss:*
County of Franklin, O.,

Arthur I. Vorys makes solemn oath and says that he is one of the above named defendants, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

A. I. VORYS.

Subscribed and sworn to before me this 19th day of May, 1904.

DAVID A. JONES,
[SEAL.] *Notary Public in and for Franklin County, Ohio.*

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

WADE H. ELLIS,
Counsel for Defendants Vorys & McKinnon.

And afterwards, to-wit: on the 26th day of May A. D. 1904, a demurrer was filed in the clerk's office of said court, clothed in the words and figures following to-wit:

Demurrer of Willis G. Bowland as Treas., etc., and L. Ewing Jones, etc.

20 THE SCOTTISH UNION AND NATIONAL Insurance Company, Complainant,
vs.
WILLIS G. BOLAND, L. EWING JONES, Arthur I. Vorys, and William S. McKinnon, Defendants.
No 1168. In Equity.

Demurrer of Willis G. Bowland, as treasurer of Franklin county, Ohio, and L. Ewing Jones, as auditor of Franklin county, Ohio, to the bill of complaint of the Scottish Union and National Insurance Company.

To the judges of the circuit court of the United States for the southern district of Ohio, eastern division:

The defendants, Willis G. Bowland, as treasurer, and L. Ewing Jones, as auditor of Franklin county, Ohio, each for himself respectively, by protestation, not confessing, nor acknowledging all or any of the matters and things in said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs to so much and such part of said bill of complaint as seeks to enjoin and restrain the defendant Willis G. Bowland, as treasurer of Franklin county, Ohio, from collecting or attempting to collect the taxes, or any part thereof, alleged in said bill of complaint to have been assessed and entered upon the tax list of Franklin county, Ohio, in the name of complainant for the years 1895, 1896, 1897, 1898, 1899, 1900, 1901 and 1902, by a dis-
21 traint against either the bonds of the United States deposited as alleged in said bill of complaint or any personal property of complainant, which may now or hereafter be situated in said county of Franklin or the State of Ohio, under the provisions of section 1095 of the Revised Statutes of Ohio, which specially authorizes and empowers the treasurer of any county, in Ohio when taxes are past due and unpaid to distrain sufficient goods and chattels belonging to the person charged with said taxes if found within the county, to pay the taxes so remaining due and the costs that have accrued and authorizing said treasurer to advertise and sell the property so distrained at public sale.

For cause of demurrer these defendants show that the complainant has not in and by its said bill made or stated such a case as entitles it in a court of equity to the relief against the defendant Bowland, as treasurer, restraining said defendant from proceeding to collect the taxes for said years 1895 to 1902 inclusive, by virtue of the provisions of said section 1095 of the Revised Statutes of Ohio.

These defendants further by protestation, not confessing nor acknowledging all or any of the matters and things in said bill of

complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, each for himself, demurs to so much and such part of said bill of complaint as seeks to enjoin and restrain the defendant Bowland as treasurer of Franklin county, Ohio, from collecting or attempting to collect the taxes alleged in said bill of complaint to be assessed and entered upon the tax list of Franklin county, Ohio, against complainant for the years 1895, 1896, 1897, 1898, 1899, 1900, 1901, and 1902, by an action against complainant under the provisions of section 2859 of the Revised Statutes of Ohio, which section especially authorizes and empowers the treasurer of any county when any personal taxes shall stand charged against any person and the same shall not be paid within the time prescribed by law for the payment of such
22 taxes, to enforce the collection thereof by a civil action in the name of the treasurer of said county against said person, for the recovery of such unpaid taxes, and on the trial of such action, if it shall be found that such person is so indebted as charged, authorize judgment to be rendered against such person in favor of said treasurer so prosecuting said action as in other cases.

For cause of demurrer these defendants show that the complainant has not in and by its said bill made or stated such case as entitled it in a court of equity — against the defendant Bowland, as treasurer, restraining him from proceeding to collect said taxes for the years 1895 to 1902 inclusive by virtue of the provisions of said section 2859 of the Revised Statutes of Ohio.

And for further cause of demurrer these defendants show that complainant is not entitled to sustain said bill for the reason that it has a full, complete and adequate remedy at law.

These defendants further by protestation, not confessing nor acknowledging all or any of the matters and things in said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, each for himself demurs to so much and such part of said bill of complaint as seeks to enjoin and restrain the defendant Willis G. Bowland as treasurer, from collecting or attempting to collect the taxes alleged in said bill of complaint to be assessed and entered upon the tax list against complainant for the year 1903, by distraint against the bonds of the United States deposited as alleged in said bill of complaint, or any personal property of complainant which may now or hereafter be situated in said county of Franklin or the State of Ohio, under
23 the provisions of section 1095 of the Revised Statutes of Ohio, which especially authorizes and empowers the treasurer of any county in Ohio when taxes are past due and unpaid to distrain sufficient goods and chattels belonging to the person charged with said taxes, if found, within the county, to pay the taxes so remaining due and the costs that have accrued and authorizing said treasurer to advertise and sell the property so distrained, at public sale.

For cause of demurrer this defendant shows that the complainant has not in and by its said bill made or stated such a case as entitles it in a court of equity to the relief against this defendant, restraining

said defendant from proceeding to collect said taxes for the year 1903 by virtue of the provisions of said section 1095 of the Revised Statutes of Ohio.

Wherefore and for divers other good causes of demurrer appearing in said bill, these defendants each for themselves respectively, demurs separately and severally to the parts of said bill of complaint above specified, and to all matters and things in said parts of said bill contained, and humbly pray the judgment of this honorable court whether they or either of them shall be compelled to make any further or other answer to such parts of the said bill as are here demurred to as aforesaid, or either of them, and pray to be dismissed with their costs and charges in this behalf most wrongfully sustained.

For further cause of demurrer, these defendants, by protestation, not confessing nor acknowledging all or any of the matters and things in the complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, each for himself demurs to said bill of complaint generally and for cause of demurrer shows that the said complainant has not in and by said bill made or
24 stated any such cause as doth or ought to entitle it to any such recovery or relief as is thereby sought, and prayed for from or against these defendants, or either of them.

Wherefore and for divers other good causes of demurrer appearing in said bill of complaint, these defendants, each for himself, respectively, demurs thereto generally, and humbly demands the judgment of this court whether they or either of them shall be compelled to make any further or other answer to said bill and to be hence dismissed with their costs as heretofore prayed for most wrongfully sustained.

EDWARD L. TAYLOR, JR.,
AUGUSTUS T. SEYMOUR,
KARL T. WEBBER, AND
W. E. KING,
Solicitors for Defendant-.

UNITED STATES OF AMERICA,
Southern District of Ohio, Eastern Division, } *ss:*
County of Franklin, Ohio,

Willis G. Bowland, makes solemn oath and says that he is one of the above-named defendant-, and that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

WILLIS G. BOWLAND.

Subscribed and sworn to before me this 21st day of May, 1904.

KARL T. WEBBER,
[SEAL.] *Notary Public in and for Franklin County, Ohio.*

I hereby certify that in my opinion, the foregoing demurrer is well founded in point of law.

AUGUSTUS T. SEYMOUR,
Of Counsel for Defendant.

25 And afterwards to-wit: on the 26*st* day of May A. D. 1904, a demurrer was filed in the clerk's office of said court, clothed in the words and figured following, to-wit:

THE SCOTTISH UNION AND NATIONAL Insurance Company, Complainant,
vs.
WILLIS G. BOWLAND, L. EWING JONES, Arthur I. Vorys, and William S. McKinnon, Defendants.
} No. 1168. In Equity.

Demurrer of Arthur I. Vorys and William S. McKinnon to the Bill of Complaint of the Scottish and National Insurance Company.

To the judges of the circuit court of the United States for the southern district of Ohio, eastern division:

The defendants, Arthur I. Vorys as superintendent of insurance, and William S. McKinnon as treasurer of state of the State of Ohio, each for himself respectively, by protestation, not confessing nor acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs to so much and such part of said bill of complaint as seeks to enjoin and restrain said defendant Arthur I. Vorys as superintendent of insurance, and W. S. McKinnon as treasurer of the State of Ohio, from delivering or attempting to deliver the bonds of the United States on deposit as alleged in the bill of complaint, so far as said bonds are
26 sought to be distrained by Willis G. Bowland as treasurer of Franklin county to satisfy the taxes charged against complainant for the years 1895 to 1902 inclusive, as alleged in the said bill of complaint, and for cause of demurrer these defendants show that complainant has not in and by its said bill made or stated such a case as entitles it in a court of equity to the relief asked against these defendants or either of them, restraining them from delivering or attempting to deliver said bonds on deposit with them as alleged.

These defendants further by protestation, not confessing nor acknowledging all or any of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, each for himself demurs to so much and such part of said bill of complaint as seeks to enjoin and restrain these defendants from delivering or attempting to deliver the bonds of the United States on deposit with them as alleged in the petition to Willis G. Bowland as treasurer of Franklin county,

Ohio, to satisfy the taxes charged against complainant upon the tax duplicate of Franklin county, Ohio, for the year 1903 as alleged in the said bill of complaint, and for cause of demurrer, these defendants show that complainant has not in and by its said bill made or stated such a case as entitles it in a court of equity to the relief asked against these defendants or either of them, restraining them from delivering or attempting to deliver the bonds of the United States on deposit, to the treasurer of Franklin county, Ohio, to satisfy a tax charged against complainant for the year 1903.

Wherefore, and for divers other causes of demurrer appearing in the said bill, these defendants respectively, demur thereto, and to all matters and things therein contained, and pray the judgment of this honorable court whether they or either of them shall be
27 compelled to make any further or other answer to said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

WADE H. ELLIS,
Solicitor for Defendants.

UNITED STATES OF AMERICA,
Southern District of Ohio, Eastern Division, } ss:
County of Franklin, Ohio,

Arthur I. Vorys makes solemn oath and says that he is one of the above named defendants, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

ARTHUR I. VORYS.

Subscribed and sworn to before me this 26th day of May, 1904.

[SEAL.] DAVID A. JONES,
Notary Public in and for Franklin County, Ohio.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

WADE H. ELLIS,
Of Counsel for Defendants.

And afterwards, to-wit: on the 2nd day of June A. D. 1904, an opinion was filed in the clerk's office of said court, clothed in the words and figures following, to-wit:

Opinion of Judge Thompson.

28 THE SCOTTISH UNION & NATIONAL INSURANCE Company *vs.* WILLIS G. BOWLAND ET AL. } Opinion.

The COURT: I may as well dispose of this matter now; I might take time to consider it, but I do not think it would change my view of it.

The plaintiff, The Scottish Union & National Insurance Company, was permitted to do business in this State upon certain conditions; it had no right to do business in this State without permission or license, and the conditions upon which it was permitted to do business are found in section 3660:

"A company incorporated by or organized under the laws of a foreign government shall deposit with the superintendent of insurance, for the benefit and security of the policy-holders residing in this State, a sum not less than one hundred thousand dollars in stock or bonds of the United States, or the State of Ohio or any municipality or county thereof, which shall not be received by the superintendent at a rate above their par value; the stock and securities so deposited may be exchanged from time to time for other like securities; so long as the company so depositing continues solvent and complies with the laws of this State, it shall be permitted by the superintendent to collect the interest or dividends on such deposits; and for the purpose of this chapter the capital of any foreign company doing fire insurance business in this State shall be deemed to be the aggregate value of its deposits with the insurance or other departments of this State and of the other States of the United States, for the benefit of policy-holders in this State or in the United States, and its assets and investments in the United States—certified according to the provisions of this chapter; but such assets and investments must be held within the United States, and invested in and held by trustees, who must be citizens of the United States,
29 appointed by the board of directors of the company and approved by the insurance commissioners of the State, where invested, for the benefit of the policy-holders and creditors in the United States; and the trustees so chosen may take, hold and convey real and personal property for the purpose of the trust, subject to the same jurisdiction as companies of this State.

Now, in coming into this State, the complainant was required to comply with the provisions of this statute, and to know and comply with all the laws of the State which would impose any duty upon it in the carrying on of its business here. It was bound to know that the bonds (other than Government bonds) deposited under this section would be subject to taxation under the laws of Ohio and that

the bonds themselves would be subject to distraint to compel the payment of any tax levied upon them. The State said, in substance, to the complainant,—"You may do business in this State when you have deposited bonds of a certain character and amount with the superintendent of insurance; and upon these bonds, taxes will be levied as upon any other property in the State, and if you fail to pay the taxes, then to the extent of this property, you will be subject to distraint for the purpose of compelling payment of the taxes. You may, as a matter of convenience to you and as a matter of grace on our part, exchange these bonds at any time for other bonds which the superintendent of insurance will approve; that is, you may substitute other bonds for these bonds,—" and by substitution is meant the taking of the others in the place of the original bonds, for all the purposes for which the original bonds were deposited. I think it has been conceded here that the taxes levied upon the bonds originally deposited might be collected by distraint upon these bonds, if they were still within the State; but it is said they are not within the State, but that bonds of the Government of the United States have been substituted in their place and that they cannot be subject to distraint. I think that position is inconsistent with the fair construction of this statute. These Government
30 bonds now on deposit are not being taxed, they are not subject to taxation, but an attempt is made to appropriate them to the payment of taxes which were properly levied upon other bonds, for which these bonds were substituted.

Now, in order to sustain complainant's position, the court would be required to construe this statute to mean that the State deliberately provided that the insurance company might escape the obligation imposed upon it to pay these taxes, at any time it saw fit, by simply withdrawing the original bonds deposited and replacing them with other bonds.

Ordinarily the substitution of certain property for other property, means that it shall stand in the place of and represent the other for all purposes.

It seems to me that this must be held to have been the understanding between the parties here, the State and the insurance company; that the State in granting this license to do business in this State provided that these bonds might be replaced by other bonds, upon the condition that the substituted bonds should in every way take place of the original bonds, and that the State did not intend to relinquish or surrender any rights which it had, under the deposit of the original bonds. These bonds, when deposited, were held by the superintendent of insurance, not only to insure compliance with the provisions of the law protecting policy holders, but to insure compliance with the tax laws of the State. It provides that so long as the company so depositing continues solvent and complies with the laws of this State, it shall be permitted by the superintendent of insurance to collect interest and dividends on such deposit implying

that at any time, if the State should be in doubt as to its
31 solvency, it may not only hold the bonds, but hold the interest and dividends to satisfy the claims of the policy-holders, and necessarily, the just claims of the State.

The right of the State to tax the property of non-residents brought within the State, is not disputed, and there is nothing in this law exempting as property the bonds of the original deposit from taxation. The company was bound to know that they would be subject to taxation and that, to their full value, they would be made available for the payment of any taxes which the State might lay upon them. The process of distraint is one which the statutes of the State provide and of which the complainant was bound to take notice.

These bonds are here, within the State, the property of the complainant, substituted for the original bonds; and the claim of the complainant is that under the true construction of this statute, they are not subject to distraint, because they are not the bonds upon which the tax was levied. This claim ignores the fact and the purpose of the substitution, and treats the claim of the State as an attempt to levy and collect a tax upon an original deposit of non-taxable bonds.

I have not read the bill, but in so far as the demurrers touch these questions, I think they are well taken and should be sustained. An entry may be prepared, however, eliminating the claim for taxes for 1903, because the old bonds were not converted into Government bonds for the purpose of evading or escaping taxation, but were exchanged for Government bonds under the provisions of section 3660; and the spirit and purpose of the law concerning evasions do not apply to this case. These bonds cannot be appropriated to the payment of the taxes assessed in 1903. The entry
32 will conform to the opinion that has just been delivered. If there be other questions covered by the demurrers, I have not ruled upon them, and the entry must conform to the points I have ruled upon.

Mr. ——: The bill asks for relief against the property, to prevent him from collecting under section 2859; it is based upon the same identical process of law——

The COURT: That is, by suit?

Mr. ——: By suit, because the statute of Ohio requires the company to——

The COURT: You cannot maintain a suit to recover a personal judgment.

Mr. ——: No; but the statutes provide that any foreign insurance company that wishes to do business in this State, shall acknowledge the jurisdiction of the State courts and shall take no appeal or writ of error from any judgment which is rendered by virtue of jurisdiction obtained in that way. Counsel, as I understand it, made the statement that if our right to distrain is proper against this property, we have the same right, under the same theory of law, to bring this personal action, in event we cannot find property

to distrain. We do not claim that we get jurisdiction that will go beyond the State——

The COURT: You might proceed against these bonds by suit but you cannot obtain a personal judgment. Your claim is, that you have a right to institute a personal action and obtain a personal judgment against this corporation, with a view to asserting it,
33 wherever the complainant may be found, in any other State or country, make it a debt of record which could be enforced by suit as such, in any other State or country?

Mr. HENDERSON: The bill alleges that such a suit has been brought and is now pending.

The COURT: I will not take the time to look it up. I will take the chances and rule against you.

Mr. ——: It might not be our claim; but that is the effect that would give to the statute.

Mr. HENDERSON: Then the demurrer on that part of the bill will be overruled, and the demurrer to the other part will be sustained.

And afterwards, to-wit: on the 9th day of June, A. D. 1904 an entry was made upon the journal of said court clothed in the words and figures following to-wit—

Entry, J. F. P., 11.

On application of defendants herein, and with the consent of complainant, the demurrer of Willis G. Bowland heretofore filed herein on the 19th day of May, 1904, and the demurrer of Arthur I. Vorys and William S. McKinnon, filed on the 21st day of May, 1904, are hereby withdrawn and the demurrers of each of said defendants filed on the 26th day of May, 1904, are substituted therefor.

And afterwards, to wit: on the 20th day of June, A. D. 1904 an entry was made upon the journal of said court clothed in the words and figures following, to-wit,

And now, to-wit, on the 20th day of June 1904, this cause having been finally submitted to the court upon the bill of complaint and the several demurrers filed thereto by the defendants, after
34 argument of counsel and due deliberation being had in the premises, it is now ordered, adjudged and decreed as follows:

That each and all of the said demurrers to so much and such parts of the bill of complaint as seek to enjoin and restrain the defendant, Willis G. Bowland as treasurer of Franklin county, Ohio, from collecting or attempting to collect the said taxes as alleged in the bill of complaint, except so much thereof as were levied for the year 1903, by distraint, under the provisions of section 1095 of the Revised Statutes of Ohio, of said United States bonds as alleged in said bill, or sufficient of said bonds to pay said taxes as aforesaid and the costs that have accrued in that behalf, and as also seek to enjoin and restrain the defendants, Arthur I. Vorys, as superintend-

ent of insurance of the State of Ohio and William S. McKinnon as treasurer of the State of Ohio from surrendering and delivering to the said defendant, Willis G. Bowland as treasurer of Franklin county, Ohio, said United States bonds, or sufficient of them, under said alleged threatened distraint of the same, to pay the said taxes and costs as aforesaid, or to so much and to such parts of said bill of complaint as seek any part of such relief, be and the same are hereby sustained; that each and all of said demurrers to so much and such parts of the bill as seek to enjoin and restrain the defendant, Willis G. Bowland, as treasurer of said Franklin county, Ohio, from collecting or attempting to collect so much of said taxes as were levied for the year 1903, as alleged in the bill of complaint, by distraint of said United States bonds or sufficient of them and as also seek to enjoin and restrain the defendants, Arthur I. Vorys as superintendent of insurance of the State of Ohio and William S. McKinnon as treasurer of the State of Ohio, from surrendering and delivering to the said defendant, Willis G. Bowland as treasurer of Franklin county, Ohio, said United States bonds, or sufficient of them, under said alleged threatened distraint of the same, to pay the said alleged taxes levied for the
35 year 1903, or to so much and such parts of said bill of complaint as seek any part of such relief, be and the same are hereby overruled; that each and all of said demurrers to so much and such parts of said bill of complaint as seek to enjoin and restrain the defendant, Willis G. Bowland as treasurer of Franklin county, Ohio, from collecting or attempting to collect the said taxes as alleged in said bill of complaint, or any part thereof, by civil action against complainant under the provisions of section 2859 of the Revised Statutes of Ohio, be and the same are hereby overruled; and that each and all of said demurrers generally to the bill of complaint be and the same are hereby overruled.

It is, therefore, further ordered, adjudged and decreed as follows:—

That the defendant, Willis G. Bowland, as treasurer of Franklin county, Ohio, be and he hereby is perpetually enjoined and restrained from collecting or attempting to collect all or any part of the said taxes as alleged in the bill of complaint, by civil action against complainant under the provisions of section 2859 of the Revised Statutes of Ohio; that the alleged levy of taxes against complainant for the year 1903 as alleged in the bill of complaint, the amount claimed by reason thereof being the sum of $2910, together with five per cent. penalty thereon, was and is wholly illegal and void, and the defendant Willis G. Bowland, as treasurer as aforesaid, be and he hereby is perpetually enjoined and restrained from collecting or attempting to collect, by distraint or otherwise, the whole or any part of said alleged taxes so levied for the year 1903, as alleged in the said bill of complaint.

That the taxes as alleged in the bill of complaint which were

levied for the years 1895 to 1902, inclusive were legally levied
36 for each of the said years upon said municipal bonds as alleged in the bill of complaint; and that the complainant is not entitled to an injunction to enjoin and restrain the defendant, Willis G. Bowland, as treasurer as aforesaid from collecting or attempting to collect so much of the said taxes as alleged in said bill of complaint as were levied for the years 1895 to 1902 inclusive, by distraint, under the provisions of said section 1095 of the Revised Statutes of Ohio, of said United States bonds or sufficient of them, or to enjoin and restrain the defendants, Arthur I. Vorys, as superintendent of insurance as aforesaid, and William S. McKinnon as treasurer of State as aforesaid, from surrendering or delivering to said Willis G. Bowland as treasurer as aforesaid, said United States bonds, or sufficient of them, to pay such of said taxes as were levied for the years 1895 to 1902, inclusive, and the costs that have accrued in that behalf, and the prayer of the bill of complaint in that behalf be and hereby is denied, for want of equity in said bill.

Judgment is hereby rendered against the complainant for the costs of the action taxed at $—

To all of which findings, rulings, orders, judgments and decrees against the defendants, the defendants and each of them, by their counsel, except, and ask that their exceptions be noted of record, which is accordingly done; and to each and all of which findings, rulings, orders, judgments and decrees, against complainant, the complainant, by its counsel, excepts, and asks that its exceptions be noted of record, which is accordingly done.

And thereupon, upon application of the complainant and of the defendants, the court fixes the amount of the appeal bond to be given in case of an appeal of this cause by either party at the sum of $500.00.

37 And afterwards, to-wit: on the 24th day of June A. D. 1904. a stipulation was filed in the clerk's office of said court, clothed in the words and figures following, to-wit:

Stipulation.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY, Complainant, *vs.* WILLIS G. BOWLAND, L. EWING JONES, Arthur I. Vorys, and William S. McKinnon, Defendants.	No. 1168.	In Equity.

It is hereby stipulated and agreed between counsel that sixty days from the date of the entry of the final decree herein shall be allowed within which time to perfect such appeals as may be taken to the

appellate courts, and that, during said period, no action shall be taken by any party looking to the execution of said decree as entered.

TAYLOR, SEYMOUR, WEBBER & KING, *Of Counsel for Defendants.*
J. H. CABELL &
W. O. HENDERSON,
Counsel for Complainant.

And afterwards, to-wit, on the 28th day of June A. D. 1904. a petition for appeal was filed in the clerk's office of said court, clothed in the words and figures following, to-wit:

Petition for Appeal.

THE SCOTTISH UNION & NATIONAL INSURANCE COMPANY, Complainant,
vs.
WILLIS G. BOWLAND, L. EWING JONES, ARTHUR I. VORYS, and William S. McKinnon, Defendants.

38 The above named plaintiff, conceiving itself aggrieved by the decree made and entered on the 20th day of June, 1904, in the above entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree and order were made, duly authenticated, may be sent to the Supreme Court of the United States,

W. O. HENDERSON &
J. HARTWELL CABELL,
Attorneys for Complainant.

Dated this — day of ——, A. D. 1904.

The foregoing appeal is allowed.

—— ——.

Dated this — day of ——, A. D. 1904.

And afterwards, to-wit on the 28th day of June A. D. 1904. an assignment of errors was filed in the clerk's office of said court, clothed in the words and figures following, to-wit:

THE SCOTTISH UNION & NATIONAL INSURANCE COMPANY, Complainant,
vs.
WILLIS G. BOWLAND, L. EWING JONES, ARTHUR I. VORYS, and William S. McKinnon, Defendant-. } 1168.

Assignment of Errors.

The above named plaintiff prays an appeal from the final decree of this court, in the above entitled cause, made and entered on the 20th day of June, 1904, to the Supreme Court of the United States, and assigns for errors:

39 First. Said circuit court erred in sustaining the separate demurrers of the defendants, Willis G. Bowland, as treasurer of Franklin county, Ohio, and L. Ewing Jones as auditor of said Franklin county, to so much and such parts of the bill of complaint in said cause as seek to enjoin and restrain the defendant, Willis G. Bowland as treasurer of said Franklin county from collecting or attempting to collect the said pretended taxes, or any part thereof, alleged in said bill of complaint to have been assessed and entered upon the tax list of said Franklin county, in the name of complainant for the years 1895 to 1902, inclusive, by distraint, under the provisions of section 1095 of the Revised Statutes of Ohio, of said United States bonds as alleged in the bill of complaint, or sufficient of said bonds, to pay said pretended taxes and the costs that have accrued in that behalf and to so much and such parts of said bill of complaint as seek any part of said relief, and in adjudging and deciding that said bill of complaint and such parts thereof as aforesaid do not entitle the plaintiff to the relief prayed for in said bill of complaint, particularly an injunction restraining the defendant, Willis G. Bowland as treasurer of said Franklin county, from collecting or attempting to collect the said pretended taxes or any part thereof, by distraint as aforesaid.

Second. Said circuit court erred in sustaining the separate demurrers of the defendants, Arthur I. Vorys as superintendent of insurance of the State of Ohio, and William S. McKinnon, as treasurer of the State of Ohio, to so much and such parts of the bill of complaint in said cause as seek to enjoin and restrain the defend-

40 ants, Arthur I. Vorys as said superintendent of insurance, and William S. McKinnon as said treasurer of State, from surrendering and delivering to the defendant, Willis G. Bowland as treasurer of said Franklin county, said United States bonds, or sufficient of them, under said alleged threatened distraint of the same, to pay the said pretended taxes and the costs, that have accrued in that behalf, and to so much and such parts of said bill of complaint as seek any part of such relief, and in adjudging and deciding that said bill of complaint and such parts thereof as aforesaid, do not entitle the plaintiff to the relief prayed for, particularly an injunc-

tion restraining the defendants, Arthur I. Vorys as said superintendent of insurance, and said William S. McKinnon as said treasurer of State from delivering or attempting to deliver said United States bonds, or any part thereof, to the said Willis G. Bowland as treasurer of said Franklin county, to satisfy the said pretended taxes or any part thereof.

Third. Said circuit court erred in finding, ordering, adjudging and decreeing that the said pretended taxes as alleged in the bill of complaint which were levied for the years 1895 to 1902, inclusive, were legally levied for each of said years upon said municipal bonds as alleged in the bill of complaint, or that any part of said pretended taxes was legally levied.

Fourth. Said circuit court erred in ordering, adjudging and decreeing that the plaintiff is not entitled to an injunction to enjoin and restrain the defendant, Willis G. Bowland as treasurer of said Franklin county, from collecting or attempting to collect so much of the said pretended taxes as alleged in the said bill of complaint as were levied for the years 1895 to 1902, inclusive, by
41 distraint, under the provisions of said section 1095 of the Revised Statutes of Ohio, of said United States bonds or sufficient of them, or to enjoin and restrain the defendants, Arthur I. Vorys as said superintendent of insurance and William S. McKinnon as said treasurer of State, from surrendering or delivering to said Willis G. Bowland as said treasurer of Franklin county, said United States bonds, or sufficient of them, to pay such of said pretended taxes as were levied for the years 1895 to 1902, inclusive, and the costs that have accrued in that behalf, and in denying the prayer of the bill of complaint in that behalf for want of equity in said bill.

Fifth. Said circuit court erred in rendering judgment against the complainant for the costs of the action.

Sixth. Said circuit court erred in not finding, ordering, adjudging and decreeing that the defendant, Willis G. Bowland as treasurer of said Franklin county, be perpetually enjoined and restrained from collecting or attempting to collect the said pretended taxes as alleged in the bill of complaint, or any part thereof, by distraint of any property of the plaintiff in the State of Ohio other than the said United States bonds as alleged in the bill of complaint or sufficient of them to pay the said pretended taxes.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY, *Complainant*,
By J. H. CABELL &
W. O. HENDERSON, *Counsel*.

42 And afterwards, to-wit: on the 28th day of June, A. D. 1904, an entry was made upon the journal of said court, clothed in the words and figures following to-wit:

Entry, J. F. P., 26.

And now it is hereby ordered that the appeal of the complainant in the above entitled cause to the Supreme Court of the United States be and is hereby allowed as prayed, upon the complainant giving to the defendants, on or before the 19th day of August, 1904, its appeal bond according to law in the sum of five hundred dollars ($500.00), for costs and damages on appeal. And it is further ordered and adjudged that upon said bond being given and approved, all further proceedings be and they are hereby ordered to be superseded and stayed until the determination of said appeal by the Supreme Court of the United States.

And afterwards, to-wit: on the 28th day of June, A. D. 1904, a petition of appeal was filed in the clerk's office of said court, clothed in the words and figures following to-wit:

Petition for Appeal.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY, Complainant,
vs.
WILLIS G. BOWLAND, L. EWING JONES, ARTHUR I. VORYS, and William S. McKinnon, Defendants. } No. 1168.

To the judges of the circuit court of the United States for the southern district of Ohio, eastern division:

The above named defendants, Willis G. Bowland, as treasurer and L. Ewing Jones as auditor of Franklin county, Ohio,
43 Arthur I. Vorys as superintendent of insurance and William S. McKinnon as treasurer of the State of Ohio; conceiving themselves aggrieved by the final decree, order and judgment entered in the above entitled cause on the 20th day of June, 1904, each for himself respectively, hereby appeals separately from so much and such part of said final decree or order as overrules said demurrers to so much and such parts of the bill of complaint as seek to enjoin and restrain the defendant Willis G. Bowland as treasurer of Franklin county, Ohio, from collecting or attempting to collect so much of said taxes alleged in the bill of complaint as were levied for the year 1903, by distraint of United States bonds or sufficient of them, and as also seek to enjoin and restrain the defendants Arthur I. Vorys as superintendent of insurance of the State of Ohio, and William S. McKinnon as treasurer of the State of Ohio, from surrendering and delivering to the said defendant Willis G. Bowland, as treasurer of Franklin county, Ohio, said United States bonds or sufficient of them under the alleged threatened distraint of the same to pay the taxes levied for the year 1903; and as orders, adjudges

and decrees that the defendant Willis G. Bowland as treasurer of Franklin county, Ohio, be perpetually enjoined and restrained from collecting or attempting to collect taxes against complainant for the year 1903 as alleged in the bill of complaint, the amount claimed by reason thereof being the sum of $2910.00 together with five per cent. penalty thereon; and as enjoins and restrains the defendants, Arthur I. Vorys, as superintendent of insurance and William S. McKinnon as treasurer of the State of Ohio, from surrendering or delivering to said Willis G. Bowland as treasurer as aforesaid
44 said United States bonds or sufficient of them to pay such taxes as were levied for the year 1903.

The defendants, Willis G. Bowland, and L. Ewing Jones, each hereby further appeals separately from so much and such part of said final decree as overrules the demurrers to so much and such part of said bill of complaint as seek to enjoin and restrain the defendant Willis G. Bowland as treasurer of Franklin county, Ohio, from collecting or attempting to collect the taxes alleged in the bill of complaint, or any part thereof by civil action against the complainant under the provisions of section 2859 of the Revised Statutes of Ohio; and as orders, adjudges and decrees that the defendant Willis G. Bowland as treasurer of Franklin county, Ohio, be perpetually enjoined and restrained from collecting or attempting to collect all or any part of said taxes as alleged in the bill of complaint by civil action against complainant under the provisions of said section 2859 of the Revised Statutes of Ohio.

And these defendants, each prays that this, his appeal to the Supreme Court of the United States, may be allowed and that a transcript of the record of proceedings and papers upon which said final decree, order and judgment was made, duly authenticated, may be sent to said the Supreme Court of the United States of America.

And now, at the time of filing this petition for appeal, Willis G. Bowland, L. Ewing Jones, Arthur I. Vorys and William S. McKinnon, appellants, herewith file an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the Supreme Court of the United States, and your petitioners will ever pray.

WILLIS G. BOWLAND,
L. EWING JONES,
ARTHUR I. VORYS,
WM. S. McKINNON, *Appellants*,
By EDWARD L. TAYLOR, JR.,
AUGUSTUS T. SEYMOUR,
KARL T. WEBBER, &
WILBER E. KING,
Of Solicitors for Petitioners.

45 And afterwards, to-wit: on the 28th day of June A. D. 1904, an assignment of errors was filed in the clerk's office of said court clothed in the words and figures following to wit:

Assignment of Errors.

THE SCOTTISH UNION & NATIONAL INSURANCE CO., Complainant,
vs.
WILLIS G. BOWLAND ET AL., Defendants.
No. 1168.

To the judges of the circuit court of the United States for the southern district of Ohio, eastern division:

The defendants Willis G. Bowland, L. Ewing Jones, Arthur I. Vorys and William S. McKinnon, now come and under rule 35 of the Supreme Court of the United States, file with their petition for an allowance of appeal in the above entitled cause, this, the assignment of errors herein, which errors defendants assert and intend to urge on the hearing of this cause on appeal in the Supreme Court of the United States namely:

(1.) Said court erred in overruling the demurrers of the defendants to so much and such part of the bill of complaint as sought to enjoin and restrain the defendant Willis G. Bowland as treasurer of Franklin county, Ohio, from collecting or attempting to collect such taxes alleged in the bill of complaint as were levied for the year 1903, and as seek to enjoin and restrain the defendants, Arthur I. Vorys as superintendent of insurance and William S. McKinnon as treasurer of the State of Ohio from surrendering and delivering to the said defendant Willis G. Bowland as treasurer of Franklin
46 county, Ohio, United States bonds or sufficient of them to pay said taxes levied for said year 1903.

(2.) Said circuit court erred in overruling the demurrers of the defendants to so much and such part of the bill of complaint as sought to enjoin and restrain the defendant Willis G. Bowland as treasurer of Franklin county, Ohio, from collecting or attempting to collect the taxes as alleged in said bill of complaint by a civil action against complainant under the provisions of section 2859 of the Revised Statutes of Ohio.

(3.) Said circuit court erred in decreeing that the defendant Willis G. Bowland should be perpetually enjoined and restrained from collecting or attempting to collect the taxes levied against complainant for the year 1903; and perpetually enjoining Arthur I. Vorys as superintendent of insurance, and William S. McKinnon as treasurer of the State of Ohio, from delivering to said Willis G. Bowland as treasurer of Franklin county, Ohio, United States bonds or sufficient of them to pay said taxes levied for the year 1903.

(4.) Said circuit court erred in decreeing that Willis G. Bowland as treasurer of Franklin county, Ohio, should be perpetually enjoined and restrained from collecting or attempting to collect said taxes as alleged in the bill of complaint by a personal action against

complainant under and by virtue of the provisions of section 2859 of the Revised Statutes of Ohio.

(5.) Said circuit court erred in not making, rendering and entering a decree in favor of the defendants and against the complainants, overruling each and all of the demurrers of the defendants to the bill of complaint, and dismissing said bill of complaint for want of equity.

EDWARD L. TAYLOR, JR.,
AUGUSTUS T. SEYMOUR,
KARL T. WEBBER, &
WILBUR E. KING,
Of Solicitors for Defendants.

47 And afterwards, to-wit: on the 28th day of June, A. D. 1904, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Entry, J. F. P., 27.

And now it is hereby ordered that the appeal of the defendants, and each thereof, in the above entitled cause to the Supreme Court of the United States be and the same are hereby allowed as prayed, upon the defendants giving to the complainant, on or before the 19th day of August, 1904, their appeal bond according to law in the sum of five hundred dollars ($500.00) for costs and damages on appeal.

And afterwards, to-wit: on the 18 day of July A. D. 1904, a bond was filed in the clerk's office of said court, clothed in the words and figures as follows: to-wit:

Bond.

Know all men by these presents, that we, The Scottish Union and National Insurance Company, as principal, and The American Surety Company of New York, as sureties, are held and firmly bound unto the defendants, Willis G. Bowland, L. Ewing Jones, Arthur I. Vorys and William S. McKinnon, in the full and just sum of five hundred dollars ($500.00) to be paid to the said defendants, Willis G. Bowland, L. Ewing Jones, Arthur I. Vorys and William S. McKinnon, certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourteenth day of July
48 in the year of our Lord one thousand nine hundred and four.

Whereas, lately at a term of the circuit court of the United States, southern district of Ohio, eastern division, in a suit depending in said court, between The Scottish Union and National Insurance Company as complainant, and Willis G. Bowland, L. Ewing

Jones, Arthur I. Vorys and William S. McKinnon as defendants a decree was rendered against the said plaintiff, The Scottish Union and National Insurance Company, and the said plaintiff The Scottish Union and National Insurance Company having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said defendants, Willis G. Bowland, L. Ewing Jones, Arthur I. Vorys and William S. McKinnon, citing and admonishing them to be and appear at a session of the United States Supreme Court to be holden at the city of Washington, D. C., on the nineteenth day of August next.

Now, the condition of the above obligation is such, that if the said plaintiff, The Scottish Union and National Insurance Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

AMERICAN SURETY COMPANY OF NEW YORK, [SEAL.]
By F. R. SHINN, *Resident Vic- Pres.* [SEAL.]

Attest: W. R. A. HAYS, [SEAL.]
Resident Assistant Secretary. [SEAL.]

Sealed and delivered in presence of
—— ——.

Approved by
A. C. THOMPSON, [SEAL.]
Judge of United States District Court for the Southern District of Ohio, Sitting and Holding United States Circuit Court.

49 THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Eastern Division, }

I, Benjamin R. Cowen, clerk of the circuit court of the United States, within and for the district and division aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the above entitled cause as the same appears of record and on file in said court.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Columbus, Ohio, this 12th day of August, A. D. 1904.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN, *Clerk,*
By ROB'T C. GEORGI,
Deputy Clerk.

50 United States Supreme Court.

UNITED STATES OF AMERICA, *ss*:

To Willis G. Bowland, L. Ewing Jones, Arthur I. Vorys, and William S. McKinnon, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court, to be holden at the city of Washington, on the* 19th day of August next, pursuant to a petition for appeal filed in the clerk's office of the circuit court of the United States for the southern district of Ohio, eastern division, wherein The Scottish Union and National Insurance Company is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 20th day of July, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States of America the one hundred and twenty-ninth.

A. C. THOMPSON,
Judge of United States District Court for Southern District of Ohio, Sitting and Holding United States Circuit Court.

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*Not exceeding 30 days from the day of signing.

51 [Endorsed:] No. 1168. United States circuit court, southern district of Ohio, eastern division. Citation. Filed Jul- 27 1904 B. R. Cowen, clerk.

We hereby, this 22nd day of July, 1904, accept due personal service of the within citation on behalf of Willis G. Bowland and L. Ewing Jones, appellees.

EDWARD L. TAYLOR, JR.,
AUGUSTUS T. SEYMOUR,
KARL T. WEBBER, &
WILBUR E. KING,
Solicitors for Appellees.

We hereby, this 22nd day of July, 1904, accept due personal service of the within citation on behalf of Arthur I. Vorys, supt. of insurance, and Willam S. McKinnon, treas'r of State, appellees.

By WADE H. ELLIS,
Att'y General of Ohio, &
SMITH W. BENNETT,
Solicitors for Appellees.

52 & 53 *Supplemental Transcript of Record.*

UNITED STATES OF AMERICA,
Southern District of Ohio, Eastern Division, } ss:

At a stated term of the circuit court of the United States, within and for the eastern division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and held at the court rooms, in the city of Columbus, on the first Tuesday of June, being also the seventh day of that month, in the year of our Lord, one thousand nine hundred and four and in the one hundred and twenty eighth year of the Independence of the United States of America.

Present: The Hon. Albert C. Thompson, district judge, sitting and holding circuit court.

Among the proceedings had were the following, towit:

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY, a Corporation, &c., Complainant,
vs.
WILLIS G. BOWLAND, L. EWING JONES, ARTHUR I. VORYS, and William S. McKinnon, Defendants. } No. 1168.

Be it remembered that heretofore towit: on the 4th. day of August, in the year of our Lord, one thousand nine hundred and four, came the defendants, by their solicitors and filed in the clerk's office of said court, their certain bond on appeal in this cause, which said bond is clothed in the words and figures following, towit:

54 *Appeal Bond.*

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY, Complainant,
vs.
WILLIS G. BOWLAND, L. EWING JONES, Arthur I. Vorys, and William S. McKinnon, Defendants. } No. 1168. In Equity. Appeal Bond.

Know all men by these presents, that we, Willis G. Bowland, L. Ewing Jones, Arthur I. Vorys and William S. McKinnon, as principals, and The Bankers Surety Company, as surety, are jointly and severally held and firmly bound unto the above named The Scottish Union and National Insurance Company, its successors or assigns in the sum of five hundred dollars ($500.00) lawful money of the United States of America, to be paid to the said The Scottish Union and National Insurance Company, its successors or assigns,

for which payment well and truly to be made we bind ourselves, our heirs, executors, successors and assigns jointly and severally by these presents.

Sealed with our seals and dated this 30th. day of July, in the year of our Lord one thousand nine hundred and four.

The condition of the above obligation is such that whereas Willis G. Bowland, as treasurer of Franklin county, Ohio, L. Ewing Jones as auditor of Franklin county, Arthur I. Vorys, as superintendent of insurance, and William S. McKinnon, as treasurer of the
55 State of Ohio have taken an appeal to the United States Supreme Court to reverse the final decree made and entered by the circuit court of the United States in and for the southern district of Ohio, and eastern division, which decree was made and entered in the above entitled suit on the 20th. day of June, 1904.

Now therefore, the condition of the above obligation is such that if the above named Willis G. Bowland, as treasurer of Franklin county, Ohio, L. Ewing Jones, as auditor of Franklin county, Ohio, Arthur I. Vorys as superintendent of insurance, and William S. McKinnon as treasurer of the State of Ohio, appellants, herein, shall prosecute said appeal to effect and answer all damages and costs, and if they shall fail to make good their plea then this obligation shall be void, otherwise to remain in full force and effect.

WILLIS G. BOWLAND.
L. EWING JONES.
A. I. VORYS, *Supt. of Insurance.*
W. S. McKINNON, *Treas. of State,*
By CHAS. C. GREEN, *Cashier.*
THE BANKERS SURETY CO.,
[SEAL.] Per G. M. KARSHNER, *Att'y in Fact.*

Approved:

By ARTHUR I. VORYS, *Supt. of Ins.*
WM. S. McKINNON,
By WADE H. ELLIS, *Att'y Gen'l.*

Approved:

A. C. THOMPSON,
Judge of United States District Court for Southern District of Ohio, Sitting and Holding United States Circuit Court.

56 UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Eastern Division, }

I, Benjamin R. Cowen, clerk of the circuit court of the United States, within and for the district and division aforesaid, do hereby certify that the foregoing is a true and complete supplemental transcript of record and proceedings had by and before said court, in the above entitled cause, as the same appears of record and on file in the clerk's office of said court. The foregoing proceedings having been had subsequent to the filing of the original transcript in said case.

Seal of the Circuit Court, South'n Dist. of Ohio.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Columbus, in said district this 24th day of August, A. D. 1904.

B. R. COWEN, *Clerk*,
By C. P. WHITE, *Deputy*.

57 United States Supreme Court.

UNITED STATES OF AMERICA, } ss:
Sixth Judicial Circuit, }

To the Scottish Union and National Insurance Company, a corporation, etc., Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court, to be holden at the city of Washington, D. C., on the * third day of September next, pursuant to a petition for appeal, filed in the clerk's office of the circuit court of the United States for the southern district of Ohio, eastern division, wherein Willis G. Bowland, L. Ewing Jones, Arthur I. Vorys and William S. McKinnon are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants as in the said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this fourth day of August, in the year of our Lord, one thousand nine hundred and four, and of the Independence of the United States of America the one hundred and twenty ninth.

A. C. THOMPSON,
District Judge of the United States Sitting and Holding Circuit Court, Southern District of Ohio.

* Not exceeding 30 days from the day of signing.

58 [Endorsed:] No. 1168. Citation. Filed Aug. 24 1904 B. R. Cowen, clerk.

AUGUST 24TH, 1904.

Service of the within citation is acknowledged for the Scottish Union and National Insurance Company, and the appearance of W. O. Henderson and J. Hartwell Cabell, solicitors for the appellees, is hereby entered in the Supreme Court of the United States in said cause.

J. HARTWELL CABELL.
WILLIAM O. HENDERSON.

59 [Endorsed:] No. —. United States Supreme Court. Willis G. Bowland. L. Ewing Jones, Arthur I. Vorys and William S. McKinnon, appellants, *vs.* The Scottish Union and National Insurance Company, appellee. Appeal from the circuit court of the United States, within and for the southern district of Ohio, eastern division. Supplemental transcript. Filed —— —, —— ——, clerk. E. L. Taylor, Jr., Columbus, Ohio. A. T. Seymour, Columbus, Ohio. Karl T. Webber, Columbus, Ohio, Wade H. Ellis, Columbus, Ohio for appellants. J. Hartwell Cabell, Cincinnati, O. W. O. Henderson, Columbus, O. for appellee.

Endorsed on cover: File No. 19,460. S. Ohio C. C. U. S. Term No. 360. The Scottish Union & National Insurance Company, appellant, *vs.* Willis G. Bowland, as treasurer, and L. Ewing Jones, as auditor of Franklin county, Ohio; Arthur I. Vorys, as superintendent of insurance, and William S. McKinnon, as treasurer of the State of Ohio. File No. 19,461. Term No. 361. Willis G. Bowland, as treasurer, and L. Ewing Jones, as auditor of Franklin county, Ohio, *et al.*, appellants, *vs.* The Scottish Union and National Insurance Company. Filed August 27th, 1904. File No. 19,460 and 19,461.

UNITED STATES OF AMERICA,
Southern District of Ohio, E. D., } ss:

I, Benjamin R. Cowen clerk of the circuit court of the United States, within and for the district and division aforesaid, do hereby certify that the foregoing, with the corrections, is a true and complete transcript of the original papers and proceeding had by and before said court in the above cause as the same appears of record and on file in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Columbus in said district this 12th day of December, A. D. 1904.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN, *Clerk,*
By C. P. WHITE,
Deputy Clerk.

Supreme Court of the United States, October Term, 1904.

THE SCOTTISH UNION & NATIONAL INSURANCE COMPANY, Appellant,
vs.
WILLIS G. BOWLAND, as Treasurer, etc., ET AL., Appellees. } No. 360.

WILLIS G. BOWLAND, as Treasurer, etc., ET AL., Appellants,
vs.
THE SCOTTISH UNION & NATIONAL INSURANCE COMPANY, Appellee. } No. 361.

Stipulation.

It is hereby stipulated by counsel for the parties in the above entitled cases that the foregoing certified corrected copy is a true and complete transcript of the record in said cases; that such corrected certified copy and transcript may be substituted on the files of said cases in said court for the incorrect and incomplete transcript of the record now on the files of said court; that said cases may be heard in said court on said certified corrected copy and transcript of the record; and that the clerk of said court may cause said certified corrected transcript of the record to be printed for the use of said court.

EDWARD L. TAYLOR, JR.,
AUGUSTUS T. SEYMOUR,
KARL T. WEBBER,
Solicitors for Willis G. Bowland et al.
J. HARTWELL CABELL AND
WILLIAM O. HENDERSON,
Solicitors for Scottish Union & National Ins. Co.

WADE H. ELLIS,
Attorney General of Ohio, Solicitor for Arthur I. Vorys and William S. McKinnon.

[Endorsed:] File No. 19460, &c. Supreme Court, U. S., October term, 1904. Term Nos. 360 & 361. The Scottish Union Nat'l Ins. Co., app'l't, *vs.* W. G. Bowland, as treas'r, &c., and W. G. Bowland, as treas'r, &c., *vs.* The Scottish Union & National Ins. Co. Certified corrected record & stipulation. Filed Dec. 19, 1904.